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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of the Application of QUESTAR GAS COMPANY for Approval of a Natural Gas Processing Agreement	Docket No. 98-057-12
In the Matter of the Application of QUESTAR GAS COMPANY for a General Increase in Rates and Charges	Docket No. 99-057-20
In the Matter of the Applications of QUESTAR GAS COMPANY to Adjust Rates for Natural Gas Service in Utah	Docket No. 01-057-14
In the Matter of the Application of QUESTAR GAS COMPANY to Adjust Rates for Natural Gas Service in Utah	Docket No. 03-057-05

INITIAL BRIEF OF THE UTAH COMMITTEE OF CONSUMER SERVICES

Pursuant to the August 26, 2003, order of the Public Service Commission of Utah ("Commission") in these dockets, the Utah Committee of Consumer Services ("Committee") files this initial brief.

INTRODUCTION

On August 1, 2003, the Utah Supreme Court ("Court") reversed, without remand, the Commission's Order allowing Questar Gas Company ("Questar Gas" or "utility") rate recovery of its coal seam gas processing costs ("CO_2 processing costs") incurred under contract with a non-regulated Questar Corporation affiliate.[1]

The Commission's order allowed rate recovery on the grounds the costs paid for a "required result,"[2] notwithstanding its conclusive determination that the utility failed to provide a sufficient record that demonstrated those costs were prudently incurred and not influenced by affiliate interests.[3]

In its reversal, the Court rejected the rationale that a required result legitimized rate recovery, and concluded the Commission ultimately decided the outcome of these proceedings with its determination that the utility failed to provide a sufficient record to demonstrate its prudence. As if that determination were not sufficient, the Court went on to say it would reach the same reversal without

[1] *Committee of Consumer Services v. Public Service Commission of Utah*, 2003 UT 29 (August 1, 2003) (hereafter "Court's Opinion").

[2] Commission's August 11, 2000 Order in Docket 00-057-20, page 35.

[3] *Ibid.*, page 34.

remand result on the grounds the Commission "erred by failing to hold Questar Gas to its burden of showing that the [rate] increase was just and reasonable."[4]

Despite the unmistakable plainness and finality of the Court's decision, Questar Gas now seeks to persuade the Commission to continue these proceedings for the unlawful purpose of allowing further evidence and findings into the record which it apparently believes will overcome the Court's appellate denial of rate recovery. Further to that end, instead of properly returning to the Court for timely clarification of any words, or the absence thereof, in the Court's decision it believes are unclear, the utility would have the Commission presume to alter what are unquestionably plain and binding words of an appellate court.

The utility's urging and argument are without merit. The finality of the Court's opinion speaks for itself. It remands nothing back to the Commission that would authorize or require further Commission proceedings beyond giving effect to the Court's decision. Moreover, there is justice as well as finality in the Commission's conclusive determination that Questar Gas failed to demonstrate its CO_2 processing costs were prudently incurred. There is justice because that determination was not made until the end of plenary proceedings lasting almost two years and through two separate rate cases that gave the utility ample opportunity – and then some – to make its case for rate recovery. According to Questar Gas:

[4]Court's Opinion, Paragraph 14.

> [T]he CO_2 issue has been fully litigated in a general rate proceeding where every rate-related issue has been on the table for the parties and the Commission to examine comprehensively and completely . . .[5]

I. THE COURT'S DECISION IS CLEAR AND FINAL ON ITS FACE

The utility's view that the Court's decision empowers the Commission to continue these proceedings is not based on any directive of the Court since its opinion and decision are utterly void of any remand or other words indicating an intent to remit such authority and jurisdiction back to the Commission. Questar Gas' view must therefore be based on a belief that the Court did not really say what it said; that hidden behind its plain words is a meaning or unintended consequence understandable only to the fully schooled and initiated. Such legalism requires the very un-legal step of taking the Court's words of reversal and rejection out of context from the reasoning and conclusions to which they relate.

The Court's Decision Addresses the Legal Justification for the Commission's Order

A fundamental rule of interpretation, not only in law but for human communication generally, is statements or words not specifically defined mean what they say. So, the first order of business is to be clear about what the Court actually said. And, revealing words regarding the breadth and focus of the Court's decision are found in the very first paragraph of its opinion.

There the Court states the subject of its review is not a contested stipulation or settlement, but a "[Commission] order . . . approving a gas rate increase:"

[5]September 11, 2000 Response of Questar Gas Company to Requests for Reconsideration and Clarification, Docket No. 99-057-20, page 5.

> The Committee of Consumer Services (Consumer Services) seeks review of an order by the Utah Public Service Commission (the Commission) approving a gas rate increase. The increase was sought to cover costs resulting from the construction and operation of a carbon dioxide (CO_2) processing plant by an affiliate of Questar Gas Company (Questar Gas).[6]

At the end of its review, the Court renders the following decision:

> We reverse the Commission's order and reject the rate increase proposed by the CO_2 Stipulation.[7]

[6]Court's Opinion, Paragraph 1.

[7]*Ibid*., Paragraph 16.

The Crux of the Court's Decision

As should be evident to the reader, this critical wording remands *nothing* back to the Commission for further findings or proceedings. The reason for such finality is found in the opinion itself.

Turning first to the Commission's rationale that a finding of a "required result" allowed it to impose CO_2 processing costs on ratepayers, the Court stated:

> We hold that the Commission's safety rationale is neither an adequate nor a fair and rational basis for departing from its prudence review standard. While safety concerns may have necessitated the construction and operation of a CO_2 plant, they do not establish who should bear the cost of these measures.[8]

The Court then directed its attention to the Commission's conclusion "that it need not rule on whether Questar Gas' decision to contract with its affiliate was prudent;"[9] and, most specifically, the Commission's determination that:

> [t]he record is insufficient to permit us to determine whether [Questar Gas]'s analysis of options prior to early 1998 was sufficiently objective and thorough, that is, to reach a conclusion whether options were ruled in or out as a result of the influence of affiliate interests. Nor can a sufficient record be developed.[10]

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[8]Court's Opinion, Paragraph 3.

[9]*Ibid*, Paragraph 5.

[10]*Ibid*., Paragraphs 5 and 13.

The crux of the Court's analysis is its unequivocal conclusion that the Commission should have denied the utility's application to recover its CO_2 processing costs in rates upon making the above conclusive determination:

> If the record had permitted, the Commission could have carried out its initial obligation to review the prudence of the CO_2 plant contract and its terms, holding Questar Gas to its burden of establishing that its decision to enter into the contract and the costs it agreed to were prudent and not unduly influenced by its affiliate relationship with Questar Pipeline. Since the Commission found that no such record was or could be made available, it should have refused to grant a rate increase that included CO_2 plant costs. We therefore overturn the Commission's decision to accept the CO_2 Stipulation and to grant the rate increase proposed therein. [Emphasis added][11]

The Decision is not about the CO_2 Stipulation

In the above-quoted statement, the Court is making *the ultimate and final decision* in these proceedings that it determined the Commission erroneously failed to make – a decision that inexorably follows from the Commission's own conclusive factual and legal determination. There is nothing narrow or procedural or inconclusive about the decision. It certainly does not merely reverse the Commission's acceptance of the CO_2 Stipulation, as Questar Gas would apparently now assert. The only reason the Court even mentions that settlement in its analysis is because it is the vehicle embodying the rate increase that it rejected.

[11]Court's Opinion, Paragraph 13.

The non-relevance of the terms of the CO_2 Stipulation in the Court's analysis and decision can be further confirmed by examining the reasoning in the Commission's Order that the Court focuses on. The Commission does not turn to an examination and analysis of the CO_2 Stipulation until *after* its conclusive determination of an insufficient record and further erroneous determination that a "required result" would allow CO_2 processing costs to be "legitimately" recovered in rates."[12] Moreover, the

[12]The erroneous determination of the Commission that in its mind legitimized rate recovery of the CO_2 processing costs was:

> Clearly, QGC has the burden to demonstrate the decision to enter the contract is a prudent one. Parties differ as to whether it did so successfully. But whether or not QGC met this burden, we can and do conclude that its decision to procure gas processing has yielded the required result, that is, it has effectively protected the safety of its customers. This means the costs of gas processing can be legitimately recovered in rates. The amount that should be recovered remains to be determined. [Emphasis added.]

Commission did not find the stipulation acceptable as an adjunct to its legitimacy analysis. Nor did it find that settlement acceptable as an apportionment of Questar Gas' entitlement to rate recovery based upon its being prudent, not prudent, or "not entirely prudent."[13] It instead grounded its approval of that settlement on the Division of Public Utilities' assessment of costs the utility *might* have been allocated as a user of Questar Pipeline's system had the controversy been submitted to the FERC.[14]

Commission's August 11, 2000 Order in Docket No. 99-057-20, p. 35.

[13]This was the definitive term the Division of Public Utilities used to describe Questar Gas' decisions giving rise to its CO_2 processing costs. See the April 19, 2000 Direct Testimony of Division witness Lowell E. Alt, Jr., Docket No. 99-057-20, pages 3, 14-17.

[14]August 11, 2000 Report and Order of the Commission, Docket No. 99-057-20, pages 35-36.

In similar manner, the Court's reversal does not derive from any analysis of the CO_2 Stipulation, but rather from an analysis and finding of error in the Commission's antecedent legitimacy analysis.[15] It is there the Court found the Commission erred in concluding it could allow rate recovery based upon the finding of a required result, or "safety exception," as an acceptable alternative to a determination of prudence. And it was in that antecedent legitimacy analysis where the Court found the Commission erred in *not* denying Questar Gas rate recovery once it conclusively determined the utility failed to demonstrate its CO_2 costs were prudently incurred. That conclusive Commission determination decided these proceedings, and it had nothing to do with the CO_2 Stipulation's terms or allocation of costs.

II. THE COURT'S DECISION LEAVES THE COMMISSION WITHOUT AUTHORITY OR JURISDICTION TO CONTINUE THIS CONTROVERSY

The Court is Limited in the Relief it May Grant

[15]The Commission reasoned that before it could determine "whether the contested CO_2 Stipulation resolves [the rate recovery dispute] in a way that is both reasonable and in the public interest," it had to first resolve two preliminary issues: (1) whether "the problem that lies at the heart of the issue" was "customer safety" or the "production and transportation of coal seam gas;" and (2) "whether we must rule on the decision to enter the contract (whether prudent) or instead can examine the outcome of that decision (whether reasonable)." It was in its analysis of those preliminary issues where it made its conclusive determination of an insufficient record and erroneous finding that CO_2 processing costs could be "legitimately recovered in rates"on the basis they paid for a "required result." Only then did the Commission turn to an analysis of "whether the contested CO_2 Stipulation resolves [the rate recovery dispute] in a way that is both reasonable and in the public interest." [See, generally, pp. 33-35 of the Commission's August 11, 2000 Report and Order in Docket No. 99-057-20.]

The Court is limited by the Utah Administrative Procedures Act[16] in the appellate relief it can grant for Commission error. It "may:"

(i) order agency action required by law;

(ii) order the agency to exercise its discretion as required by law;

(iii) set aside or modify agency action;

(iv) enjoin or stay the effective date of agency action; or

[16]Utah Code 63-46b.

(v) remand the matter to the agency for further proceedings.[17]

As discussed above, the Court did not "remand the matter to the [Commission] for further proceedings." It also did not "order agency action required by law;" "order the agency to exercise its discretion . . ."or "enjoin or stay the effective date of agency action." There is nothing in the relief the Court granted that requires or empowers the Commission to do anything other than give effect to a final appellate court decision that set aside its order.

The Court's Form of Remittitur

The Commission's authority and jurisdiction regarding this controversy ceased when the Committee perfected its appeal[18] and it only returns to the Commission to the extent the Court returns or remits it.[19] The form of remittitur or mandate used by the Court to remit proceedings back to the

[17]Utah Code § 63-46b-17(b).

[18]An appeal is "perfected" when the acts contemplated in the statute providing therefor have been done. 4. C.J.S. **Appeal and Error** § 286. Such acts would presumably include the timely filing of notice of appeal, filing of a docketing statement, and transfer of the Commission's record of proceedings to the appellate court. No issue has ever been raised that the Committee's appeal was not perfected.

[19]4 C.J.S. **Appeal and Error** § 395.

Commission is brief and apparently contains similar wording regardless whether the Court is remanding a matter back to the Commission for further proceedings or not. In this case it states:

> This cause having been heretofore argued and submitted, the Court being sufficiently advised in the premises, and the OPINION having been issued, the matter is hereby remitted.[20]

Since the form of remittitur utilized by the Court does not specify the mandate of authority and jurisdiction returned to the Commission, one must refer to the opinion and decision referenced in the remittitur.[21]

The Absence of Remand was Intentional and a Remand would Serve no useful Purpose

[20]The form of remittitur the Court used in remanding Commission Docket 98-057-12 proceedings back to the Commission is identical to the form and wording of the remittitur in this case where nothing was remanded back to the Commission.

[21]5 C.J.S. **Appeal and Error** § 974, page 474.

As Section I above makes clear, the Court's opinion does not remand any authority and jurisdiction back to the Commission to continue these proceedings. The absence of such directive appears very intentional in light of the significant portion of the Court's opinion devoted to the discussion of an earlier related case, which the Court *did* remand back with explicit and detailed instructions to the Commission for further proceedings.[22] The Court's juxtaposition and treatment of that earlier case with this case in its opinion makes it all the more untenable for the utility to try and argue that the Court's decision in this case did remand something back to the Commission that would allow further proceedings. Such remand of authority and jurisdiction for further findings and proceedings is plainly not there for the reason it would serve no useful purpose since, as the Court found, these proceedings were ultimately and finally decided by the Commission's conclusive determination of an insufficient record.[23]

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[22]This was the case of *Questar Gas Co. v. Utah Pub. Serv. Comm'n*, 34 P3d 218. See Paragraphs 2-4 of the Court's Opinion.

[23]It is to be expected that a remand order would not accompany an appellate Court's reversal decision where the remand would serve no useful purpose or where the party to be benefitted by the further proceedings has already been afforded the opportunities otherwise afforded by further proceedings but did not take advantage of them.

> At any rate an appellate court, on reversal, usually will exercise its discretion by ordering a new trial or further proceedings whenever it appears that the ends of justice will best be served by such course, [citations omitted] but will refuse to make such an order where it appears that it is unnecessary and would serve no useful purpose, [citations omitted] and will also refuse to make such an order where it would not comport with the practical administration of justice, [citations omitted] or where the party for whose benefit the new trial or other proceedings would operate has already voluntarily and knowingly refused to take advantage of opportunities identical with those which would be afforded upon remand.

III. QUESTAR GAS HAS HAD ITS DAY IN COURT

[Citations omitted] Moreover, the propriety of a new trial must be apparent on the record at the time of reversal. [citations omitted] 5 C.J.S. **Appeal and Error** § 945.

Aside from whatever arguments Questar Gas might raise regarding the effect of the Court's reversal of the Commission's order, there is a further fundamental reason why these proceedings are over that is implicitly present in the Court's decision, but which nevertheless deserves further comment: *Questar Gas has had its 'day in court' – and a very ample day at that*. Because a party's evidence after plenary hearing or trial is ultimately found wanting is no justifiable reason to give the party another opportunity to make its case. Such logic would tend to make trial victors eventual losers and encourage unending litigation. "Due process contemplates that somewhere along the line a fair trial be had – not that there be two or three fair trials."[24]

Determination of an Insufficient Record Was Made after Ample Opportunity to be Heard

In considering the Commission's determination of an insufficient record, it is important to bear in mind that determination was made *after* a plenary hearing on the prudence and reasonableness of Questar Gas' actions and inactions giving rise to its CO_2 processing costs was completed – a plenary hearing that extended through two separate case dockets. The CO_2 Stipulation was presented to the Commission at the end of that plenary hearing. In fact, as Questar Gas emphasizes in its post-hearing brief in Docket 99-057-20, that settlement was entered into only after each of the participating parties had made its case before the Commission, and in recognition of the uncertainties of "pressing on to an 'up-down' decision by [the] Commission:"

[24] *Hohreiter v. Garrison*,184 P.2d (1947) 323, 334; as cited in *C.V.C. v. Superior Court*, 106 Cal. Rptr. 123, Cal. App. 1973, FN. 11. See generally, 16C C.J.S. **Constitutional Law** § 968.

> Questar Gas resolutely believes it undertook an appropriate and prudent course of action in dealing with the Btu-safety problem on its system. Nevertheless, it recognizes – as have the Division, the IGU and LCG – that there are litigation risks, costs and uncertainties in pressing on to an "up-down" decision by the Commission and the appellate courts. Accordingly, the four entities, each for its own reasons, have agreed to terms and conditions that constitute the usual fabric of a reasonable settlement: no party is particularly satisfied with the outcome, but each recognizes the uncertainties of litigation and desirability of a final solution of the issue in which each side concedes something on which it held an earnest and strong view.[25]

Questar Gas Has Already Had More than One Sufficient Opportunity to Make its Prudence Case

Questar Gas' efforts to demonstrate its CO_2 processing costs were prudently incurred began with the filing of its application for rate recovery in a 1998 Account 191 cost pass-through proceeding, Docket No.98-057-12; and its efforts continued throughout that earlier proceeding and into the utility's1999 general rate case filing, Docket No. 99-057-20, where it petitioned the Commission to take official notice of the record of the1998 proceeding in support of its petition for interim rate relief.[26]

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[25]Post-Hearing Brief of Questar Gas Company, Docket 99-057-20, pp. 23-24. See also Response of Questar Gas Company to Requests for Reconsideration and Clarification, Docket 99-057-20, pp. 10-11, where Questar Gas further argues:

> Every issue, sub-issue, point, counterpoint, argument, rebuttal and relevant factual development was heard and considered by the Commission – usually several times over . . . [September 11, 2000, Response of Questar Gas Company to Requests for Reconsideration and Clarification, Docket No. 99-057-20, pp. 10-11.]

[26]See the discussion under *Course of Proceedings*, on pp.5-6 of the Committee's Opening Brief on appeal. In petitioning the Commission to take official notice of the Docket No. 98-057-12 record for purposes of obtaining interim rate relief, Questar Gas must have concluded that record presented at least a 'prima facie case' that would entitle it to interim rate relief under Utah Code 54-7-12(3)(a), which predicates any such relief on "an adequate prima facie showing" by the utility "that the interim rate increase or decrease is justified."

Questar Gas' application in the1998 proceeding is a litany of argumentative reasons why the costs at issue were prudently incurred and should be allowed into rates. The testimony of its principal witness accompanying that application expanded on those arguments and concludes with the following question and answer exchange:

> Q. Why should the contract be approved?
>
> A. The issues related to reduced Btu gas faced by Questar Gas' customers are real. The Company has analyzed the options available and selected the most reasonable, *prudent* course of action . . . The contract should be approved because it is the *prudent* solution to this issue. [Emphasis added]

The utility's contention that it acted prudently was immediately joined in the responsive testimony of Committee, Division of Public Utilities, and other party witnesses in that earlier proceeding; which testimony pointedly raised the issues of conflicting affiliate interests and affiliate control. The exchange and proffering of evidence on those issues was such that Questar Gas' principal witness later testified the issue of prudence was "the central element" before the Commission in the Docket 98-057-12 proceeding, even though the Commission did not rule on it at that time.[27]

Having been so joined in the earlier proceeding, the issue of prudence entered the Docket No. 99-057-20 general rate case proceedings fully on the table before the Commission, only to be further

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[27]On page 13 of his April 26, 1999 Rebuttal Testimony in Docket No. 98-057-12, Company witness Alan K. Allred provided the following question and answer exchange:

> Q. Mr. McFadden states that determining who should pay for the cost of processing is the key question in this case. . . Is he correct?
>
> A. No. Prudence is the central issue of this case, but cost causation is also a concern.

supplemented by additional discovery evidence, testimony, rebuttal testimony, and cross-examination by Questar Gas and opposing parties. Near the end of a record built during the course of two separate rate proceedings, Division witness Lowell Alt, in Docket No. 99-057-20 summarized the issue of prudence as follows:

> In sum, after extensive review of information in this case and No. 98-057-12, the Division believes that the actions of QGC were not entirely prudent. QGC's actions, or in-actions, appear to be influenced by affiliate relations more than the financial interests of its customers.[28] [Emphasis added]

Before this definitive testimony by Division witness Alt – in fact, simultaneous with the filing of the utility's December 17, 1999 application in that case – the utility's principal witness testified in connection with the utility's petition for interim rate relief as follows:

> The Commission has heard extensive evidence on the nature and amount of these costs and on the issue of prudence of the Company's decision to protect customers' safety by contracting for this processing . . .[29]

[28]April 19, 2000 Direct Testimony of Division witness Lowell E. Alt, Jr., Docket No. 99-057-20, p. 3.

[29]December 17, 1999 Prepared Direct Testimony of Alan K. Allred, Docket No. 90-057-20, p 19.

And, even after this testimony in the later proceedings, the utility had the opportunity to still further supplement what it already described as "extensive evidence on the nature and amount of these costs, and on the prudence of the Company's decision . . ." It also had ample opportunity – during both the Docket 98-057-12 hearings and the Docket 99-057-20 hearings – to cross-examine opposing witnesses as it thought best in order to overcome the case other parties were making against its claim of prudence. It was further given every opportunity during discovery in both proceedings to document the decision-making process it went through in selecting the CO_2 Plant remedy and incurring affiliate contract gas costs, and to show how that decision-making process was prudent.[30] Questar Gas' failure

[30]April 1, 1999 Direct Testimony of Division witness Darrell S. Hanson, Docket No. 98-057-12, pp. 9-13. See also the June 23, 1999 Rebuttal Testimony of Darrell S. Hanson, Docket No. 98-057-12, p. 2, where he stated:

> Q. Did you investigate the process that the Company went through in evaluating the alternatives to the low BTU problem?
>
> A. Yes. I asked several data requests related to the decision making process. In everything that I reviewed, I did not see a comparison that was from the viewpoint of QGC and its customers. All were influenced by affiliate

to produce credible evidence for the record showing its management decisions and actions were not controlled by affiliates with conflicting interests supports the Commission's conclusion that a record, demonstrating utility management decisions were not so influenced, could not be developed.[31]

Questar Gas' Case Was Simply not Persuasive in Light of Opposing Evidence

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relationships. Several examples are illustrated in my prefiled direct testimony.

[31]The Commission's complete statement regarding an insufficient record is quoted at the bottom of page 5, above.

That Questar Gas responded to opposing testimony and evidence in the record in a manner which ultimately failed to satisfy or persuade the Commission is not the result of any lack of opportunity to make its case, because – by its own admission – it had every opportunity to do so – and then some.[32] It is rather the result of how the utility chose to respond and the evidence it failed to produce. For example, in the face of opposing evidence showing its actions[33] were controlled by Questar affiliates with conflicting interests, the utility countered with arguments such as: (1) affiliate intervention occurred simply to "help" the utility, and "the affiliate relationship with Questar Gas does not impose on Questar Pipeline the obligation to act against its own interests;"[34] and (2) Questar Pipeline had no choice but to transport the increasing quantities of coal seam gas.[35] Neither there nor elsewhere did the utility *ever*

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[32]See footnote 25, above.

[33]"Actions" here includes "failure to act." Much of the case of opposing parties against Questar Gas' claim that it acted prudently was its *failure* to timely and independently respond to actions by its owner and sister company that were harming the utility and its customers. The telling nature of that case by opposing parties is captured, at least in part, in the rhetorical question by Commission Chairman Mecham near the end of the earlier proceedings:

> If Questar Gas were completely separate, and . . . a pipeline serving Questar Gas, unaffiliated with it, came to it and said, we're taking this new gas, and its going to lower the BTU content, don't you think – I mean is it unreasonable to think that completely unaffiliated distribution company would raise all sorts of Cain about that? Reporter's June 23, 1999 Transcript of Proceedings, Docket No. 98-057-12, pp. 504-505.

[34]April 26, 1999 Rebuttal Testimony of Alan K. Allred, Docket 98-057-12, pp. 8-9. This testimony is part of a nine-page section of prepared rebuttal testimony captioned: "Questar Gas' Affiliate Relationships are Beneficial."

[35]The Committee's Opening Brief to the Utah Supreme Court addressed this claim by the utility, showing how Questar Corporation and Questar Pipeline *years earlier* embarked upon a substantial capital expansion and upgrade of Questar Pipeline's system to accommodate the increasing quantities of coal seam gas anticipated to require transport in the future. See pp. 30-34 of the Committee's Opening

credibly confront the prudence issues of conflicting affiliate interests and control raised and substantiated by opposing parties in the record despite numerous opportunities to do so.

The record of these proceedings - extending through two separate rate cases – is a record of Questar Gas having been afforded every opportunity to demonstrate that the costs at issue were prudently incurred and not the result of the influence of affiliate interests. That it ultimately failed to do so simply means it had its fair 'day in court' to show it was entitled to recovery of those costs and finally lost.

SUMMARY

This issue would not be before the Commission had Questar Gas timely and appropriately petitioned the Court to clarify its decision. For reasons not that difficult to discern, the utility chose not to do that and is instead urging the Commission to assume authority it does not have to fundamentally alter – indeed ultimately reverse – a plainly-worded decision of the highest appellate court in this state.

It is difficult to see why the Commission would step into this play of Questar Gas' making, facing the virtual certainty that it would be found to have arrogated authority it does not have. The far wiser course is to give effect to the plainly-worded decision of the Court that denies Questar Gas rate recovery of its CO_2 processing costs because it ultimately failed to demonstrate those costs were prudently incurred and not influenced by affiliate interests.

The Committee trusts the Commission will agree its mandate from the Court is clear. Its order allowing CO_2 processing costs into rates has been reversed by a final decision of the Court. There is

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Brief to the Court.

not – in fact there never was – a lawful rate whereunder Questar Gas can legally recover its CO_2 processing costs from ratepayers. The Commission's duty therefore is to implement the Court's decision by adjusting Questar Gas'191 balancing account to remove and return to ratepayers the monies the utility has recovered and still is recovering for CO_2 processing costs.

Submitted this 25th day of September, 2003.

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CERTIFICATE OF SERVICE

I certify that I mailed or hand-delivered the foregoing **INITIAL BRIEF OF THE UTAH COMMITTEE OF CONSUMER SERVICES** in Docket Nos. 99-057-12; 99-057-20; 03-057-14 and 03-057-05 this _____ day of September, 2003.

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